

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 01-0163
CORPORATE INCOME TAX
FOR TAX PERIODS: 1993-1999**

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Issue

1. Income Tax: Unrelated Business Income

Authority: 26 USC 513, IC 6-2.1-3-23, IC 6-3-2-3.1, Income Tax Information Bulletin #84, November 1992.

The taxpayer protests the assessment of income tax on unrelated business income.

2. Tax Administration: Statute of Limitations

Authority: IC 6-8.1-5-2(a), Income Tax Information Bulletin #17, June 1992.

The taxpayer protests the assessment of income tax on two years.

Statement of Facts

The taxpayer was organized in 1990 as a not for profit corporation related to another not for profit corporation in order to raise money for local charities through bingo and other legal charitable gaming operations. The taxpayer applied for and received status as a wholly exempt charitable organization for both federal and state purposes. The taxpayer's gaming qualification and bingo license applications were filed with information from the related not for profit corporation. Since the taxpayer did not use its own corporate information on the applications, it was never licensed to conduct gaming activities. Although the taxpayer was not properly licensed, it operated the bingo activity including the sale of pulltabs, tipboards and related activities as a separate proprietary operation. The taxpayer filed the IT-35AR informational return for the tax years 1997 and 1998. It never filed the required IT-20NP returns or paid the income tax on its unrelated income. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed income tax, interest and penalty. At the taxpayer's request, a hearing was held. Further facts will be provided as necessary.

1. Income Tax: Unrelated Business Income

Discussion

For gross income, adjusted gross and supplemental net income tax purposes, charitable organizations owe income taxes on unrelated business income as defined at 26 USC 513 stated in pertinent part as follows:

. . . any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the property derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting basis for its exemption. . . .

The department published its interpretation of these statutes and their relation to charitable gaming in Income Tax Information Bulletin #84, November 1992. That policy statement, pursuant to IC 6-3-2-3.1 and IC 6-2.1-3-23, identifies certain charity gaming income from qualified organizations as not subject to income taxes. It also specifically states that any illegal income received by charitable organizations is considered unrelated business income and subject to income taxes.

Since the taxpayer did not hold a valid charity gaming license, the income from the bingo, tip boards and pulltabs was illegally obtained from unauthorized activities. This income met the criteria of taxable unrelated business income.

Finding

The taxpayer's protest is denied.

2. Tax Administration: Statute of Limitations

Discussion

The statute of limitations, found at IC 6-8.1-5-2(a), requires that the department issue all notices of proposed assessment within three years after the return is filed. Pursuant to the departmental instructions in Income Tax Information Bulletin Number 17, dated June, 1992, not-for-profit corporations are required to file I-35 AR informational returns and IT-20 NP's reporting and computing income tax on unrelated business income.

The taxpayer contends that its filing IT-35 AR returns for several of the taxable years began the running of the statute of limitations for those years. The taxpayer was also required to file IT-20 NP's for each year it had unrelated business income. The taxpayer did not file these returns nor report this income in any other fashion. Therefore, the statute of limitations did not begin to run on the income taxes due on unrelated business income. The notices of proposed assessment for additional taxes on unrelated business income were issued timely.

Finding

The taxpayer's protest is denied.